

14356


No. _____

Supreme Court of Illinois

Ill. Cent. R. R. Co.

vs.

Buckner.

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STATE OF ILLINOIS,

22 243
SUPREME COURT.

Third Grand Division.

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No. 59.

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Ill Cent
RR Co

5862

Buckner

Prepared

Jameson & Morse, Printers, Chicago.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

THE ILLINOIS CENTRAL R. R. CO.,
Appellant, } *Appeal from Iroquois.*
vs.
CHARLES BUCKNER, Appellee. }

ABSTRACT OF RECORD.

- 2 May 30th, A. D. 1861, declaration in case of usual form filed, and set forth between pages 2 and 28, inclusive.
- 29 November 19th, A. D. 1861. Pleas, general issue, and special plea, that the injuries complained of were the result of plaintiff's (below) negligence, filed.
- 30 Demurrer to special plea filed same day.
- 33 November 19th, 1861. Demurrer sustained.
- 35 November 30th, 1861. Jury find defendant below guilty, and assess plaintiff's damages at \$2,500.
- 36 Motion for new trial overruled, December 19th, 1861.
- 38 Bill of exceptions.
- 38 *Evidence.* Charles W. Bigelow, sworn. He was standing in his shop at Chebanse, and heard a train; he looked out of his window, and saw the hind wheels of a wagon on the front of a train, and a man being thrown on the platform; the train went a little by and then came back. The horse was killed and the wagon broken up so that it was not worth repairing—wagon worth forty dollars; the horse was worth one hun-

39 dred dollars. The plaintiff's right arm was broken in three places, bone
smashed; he was thrown on his head; and his left shoulder was bruised,
and his left leg was abraded some. It was a wild train running at
an unusual rate of speed. It came from the south, and was a half hour
before the time for the regular train from the north. The roar of the
train first attracted my attention; it must have been running twenty
miles an hour.

Question. State whether there was a road across the railroad track
at that place that was used by the public?

Objected to. Question allowed, to which defendant below then and
there *excepted*.

39 *Answer.* There is a road there; it crosses the railroad upon one of
the streets of the town, at right angles to the railroad; runs from east to
west, south of depot buildings; there is a depot and platform there, and
a crossing both north and south of depot. Buckner was at the south
crossing; don't know who built the lower crossing; the public furnish
40 the materials and the railroad hands do the work. They ran north be-
fore they stopped, seven hundred and twenty-six feet. There was a
locomotive and one car, called a caboose. The side track runs south
some 800 feet; there were two cars on side track, south of the crossing,
the first being forty-five feet from the crossing, and the other twenty
feet further south. There is a cut six or seven feet deep below the cross-
ing, and a large pen eight feet high—on the highest ground of the cut—
41 six or eight rods south of the cars. The east side of the track is the
most settled. Buckner was coming from the west; freight trains usual-
ly run from 14 to 18 miles per hour; they whistled on breaks one hun-
dred and fifty feet north of crossing; I heard no bell or whistle before
that.

41 State, if you know, what the custom of said railroad was prior to
the time the accident occurred, in crossing their track, in regard to the
speed of the cars?

Question allowed and defendant excepted.

Answer. Their custom is to ring the bell at the distance of eighty
rods and slack the speed of the train to eight miles an hour.

42 *Q.* "State whether you know of the company having advertised the
time of their regular trains?" Objected to; objection overruled, and
exception taken. *A.* Can't say positively. "State whether that train
was on the usual time." Question objected to, and objection overruled,
to which defendant excepted. *A.* It was not.

Cross-examination. I was in my shop when I heard the train coming; my shop is three hundred feet east of the passenger house; the east door of my shop was open; I could not see the platform from my shop; I don't know where he was when he was struck.

43 There are no boards at the place he was struck to indicate that it
was a public crossing; but north of the depot there is a crossing, with a
43 board put up, which says on it, "Railroad Crossing." The upper crossing
is the main road; it has connections with the country roads. There
is no work done on each side of the lower crossing; it is not needed.
The wagon was a one-horse wagon; a man on the seat could see better
than I could from the road. There was a gap between the cars standing
on the side track, and through it I could have seen the train some four
or five rods before reaching the crossing. The bell might have rung and
I not heard it. The plaintiff was a little deaf at that time, and is yet.
44 No man standing on the ground can judge as well of the speed of a train
as a man on the train, who knows his business.

Dr. Warner sworn. I was 120 rods south-east of the whistling-post
when the train passed; I saw the cars three-fourths of a mile south of
the whistling-post; they did not whistle or ring the bell after they got
past the post; I should not have heard the bell if they had rung it, as I
45 was in a buggy which made considerable noise; I should think they
passed the post at some thirty or forty miles per hour. I helped set
45 plaintiff's arm; it was a compound fracture, broken twice; the right
arm; 23d of August, 1860. "Was there any road south of the Illinois
Central depot?" Objected to; objection overruled, and defendant ex-
cepted. A. "There is a crossing there." "Do you know who made
the road there?" Question allowed, and defendant excepted. A. "The
people furnished the material and the railroad hands did the work."
There were two or three empty cars standing on the west side of the
46 track. A person standing 100 or 150 feet west of the track could see the
whistling post. The horse was worth from eighty to one hundred dol-
lars; was a colt 3 or 4 years old.

Cross-examination. I think a person two hundred feet from the
crossing could have seen down the track. I first heard the cars a half
mile south of me; I heard them distinct enough to know it was a train
of cars. I should think a man would discover a train was coming before
the engineer could discover the man.

47 At the upper crossing there is a sign board, with the words "Rail-
road Crossing, look out for the cars." There is no sign at the south
crossing. A man with the ordinary organs of hearing could have heard
the train half a mile off, and safely crossed the track without being hurt.

The engineer could not have seen a man until he got almost on to the track, even if he were looking out.

48 Mrs. J. W. Warner sworn. I saw the plaintiff drive on to the track at Chebanse; the train was then at Leonard's corn crib; he was coming from the west; his horse became unmanageable as he got upon the track, and run north on the track toward the depot. I saw the cars strike one wheel of the buggy; the cars were running faster than usual; I was attracted by the rumbling of the cars; I first saw the cars after they had passed the whistling post; I stood at the door of my house, 150 feet from the track; I heard no bell or whistle after they passed the post; I think I should have heard, if they had sounded. The train was at an unusual time; an engine and one car.

49 *Cross-examination.* Plaintiff had got about one-half way from the crossing to the depot on the track, when the cars struck him. Any body of ordinary hearing could have heard the cars. I could have heard them if I had been where I saw Mr. Buckner. The engine made a great deal of noise. It must have been some 300 feet from my house to the depot.

When the horse became unmanageable he sheered off and ran down the track.

50 Joseph Gleason, sworn. Thinks the cars were running faster than usually. Had a faint recollection of hearing a bell.

Henry Ostrander, sworn. "What were the circumstances of Mr. Buckner at the time he got hurt?" Objected to. Question allowed. Defendant excepted. *Ans.* He depended wholly upon his own labor for a living; he had not much of any property; he had a wife.

Cross-examination. Smart for one of his age; he is about seventy years old; he is and was at that time a little deaf.

51 Dr. Warner, recalled. Has examined plaintiff since before on the stand; his upper arm bone seems to have lapped some; the radius and ulna have united together; the muscles have shrunk, so that he can only use the thumb and fore finger. His leg had a strip cut out of it and the flesh sloughed off, and the skin adheres to the bone. He has not a good use of his leg and never will have, he is so old.

Dr. Buckner, sworn. Son of plaintiff; his arm was broken in four places; his leg badly bruised. He was confined to his bed between two and three months. He has but little use of his arm now. Before his injury he made a good living at work. He is not able to work now. "What are the plaintiff's circumstances now?" Objected to. Objection

overruled and exception taken by defendant. *Ans.*" When he was hurt he had a home and five acres of land; since he got hurt he has been obliged to depend on the charities of his friends.

52 John Buckley, sworn. Saw the train two hundred yards below the crossing; they were neither ringing the bell nor blowing the whistle, and were coming rapidly. When Buckner went on the track the cars were forty or fifty yards off. When I caught sight of the old man he made a pause and turned to the left and tried to get off.

Cross-examination. I was standing in my door at the time, about one hundred feet in a straight line from the depot; the horse turned to the north, the wagon was on the crossing.

53 Edward Vaughn, sworn. Was engineer of the train; was a wild train; saw the section men eighty rods south of the station, and there we came to nearly a dead stop. The fireman rang the bell all the way from the men to the station. I did not whistle at the post. The first I saw of the wagon it was coming up by the smoke stack. The crossing south of the depot is not a public crossing. The train was running from seven to eight miles an hour. I was ten yards north of the crossing when the collision occurred. "What degree of caution were you using when you ran into the wagon? Objected to by plaintiff. Question allowed, and plaintiff excepts. *Ans.* I was using the same caution I
54 always do. I did not see any object. I was looking out for section men. When I went back to the plaintiff, he said if he had his hearing, this would not have happened. Where he crossed it was a level place, and the people would cross there; so the company put down plank to protect the rails.

Cross-examination. Have been in the company's employ four or five years; am now. I was running the cars as engineer and agent of
55 the company. I ran about a rod and a half before I stopped the train.
56 There is an up grade all the way from the whistling post. I could not see anything near the road at the crossing. We could not have seen any one, situated as we were, who might be coming from the west by the car below, until he would get past the car.

John Cooper, sworn. Was a brakeman on the train; was in the car looking out the west door; did not see the wagon struck. The bell was rung from time to time, from the switch till we came to the crossing. We were running seven or eight miles an hour. There were cars on
57 the side track between the corn crib and the crossing. I heard the bell in the car. "At the speed you were running and the manner in which you were ringing that bell, and the distance you were from that cross-

ing, was it sufficient to warn off a person of ordinary hearing and caution at the crossing? Objected to by plaintiff. Objection sustained, and defendant excepted."

58 *Cross-examination.* I went out and put on the brakes before we got to the section men, who were at the whistling post. The end of the switch is about two-thirds down from the whistling post. I am certain the bell was ringing from the end of the switch up to the collision. I saw the plaintiff on the prairie, driving towards the track, when we were about half way between the crossing and the switch, but could not tell that he was coming across the track. Don't know certainly that it was the plaintiff. There was no house between me and him. He was coming from the south-west.

59 Patrick McLaughlin, sworn. Was a brakeman on the train; were running seven or eight miles an hour. We rung the bell from the section men, who were about eighty rods from the station, until we came to the station. We came nearly to a stand where the section men were at work. I saw the man coming on the prairie with a horse and wagon, and thought he would stop before crossing, but he did not. I sprang to the break. We were about ten or fifteen cars' length from him, and he was coming about as fast as his horse could trot. We stopped at the north end of the platform. It was struck north of the crossing. If the man had had ordinary hearing, he could have heard the cars. I heard him say that if he had had his hearing this would not have happened. I did not put on the brakes because I did not think he would be so foolish as to attempt to cross. Cooper and myself have ever since been in the employ of the company.

John Bulkley recalled. Did you have any conversation with Mr. Vaughn and Mr. Bigelow at the time this injury occurred?

Objected to; objection overruled and defendant excepted.

60 *Answer.* When Vaughn came back from Kankakee, he said he slacked up a little below the switch, and after he passed there, he opened the valves, looked ahead and saw nothing, then sat down, and knew nothing of the accident until told by the fireman.

INSTRUCTIONS ON PART OF DEFENDANT.

63 That a party seeking to recover damages for an injury, which he alleges has been caused by the negligence or misconduct of others, must show to the jury that he has not been wanting in reasonable care to avoid the injury, for if he has been so wanting (to which the court added "and thus contributed to produce the injury,") he cannot recover.

Defendant excepted to instruction as above modified.

64 The plaintiff is bound to prove the crossing where this accident occurred, to be a public highway, and the jury are instructed that a public highway can be only created in three ways: first, by prescription, that is, twenty years or more use; second, by dedication by the proprietors of the land; and third, by laying out and having the road recorded under the statute. And if the jury believe that the plaintiff has not proved a public highway to exist in one of these ways, then the law is for the defendants, and the plaintiff cannot recover.

64 If the jury shall believe from the evidence that the injury happened north of the crossing, and on the land and track of the defendants, and was in the use of the defendants, the plaintiff was a trespasser thereon, and if he was on said grounds without permission of the defendants, and not for any necessary purpose, he was there in his own wrong and at his own risk, and the law is for the defendants, and the plaintiff cannot recover; unless the jury believe from the evidence that the defendants wilfully injured the plaintiff. To which the court of its own motion added, "This would not apply if the jury should believe from the evidence, that the horse rushed on to the track north of the crossing to avoid the engine, or plaintiff turned him that way for that purpose."

To the giving of which instruction as modified, the defendants then and there excepted.

65 If the jury believe from the evidence, that the plaintiff failed to use that amount of caution which a prudent man would have used in crossing the railroad track, at the time he attempted to cross the same, and thereby became injured, without gross carelessness on the part of the servants of the railroad company, it is immaterial whether the bell rang or alarm was given by the whistle at the whistling-post, the law in such case is for the defendants.

Which last instruction the court wholly refused to give, and thereupon the defendants excepted.

INSTRUCTIONS.

The Court read to the jury the following instructions, on the part of the plaintiff to the giving of each of which, the defendants, by their counsel, then and there excepted.

61 You are further instructed that the law requires the Illinois Central Railroad Company to ring a bell of at least thirty pounds weight, or blow a whistle at least eighty rods from every road crossing, and to continue the ringing of the bell or blowing of the whistle at intervals, until after passing the crossing; and in this case, if you believe from the evidence that at the time of injuries upon plaintiff, that the bell was not rung or whistle blown, as required by the law, and if you further believe that plaintiff has produced evidence tending to show that the injuries to plaintiff were in consequence of such neglect, then it devolves upon the Railroad Company to prove clearly and satisfactorily that the injuries to plaintiff were not the result of such neglect.

62 If you believe from the evidence that the crossing of the railroad of the defendant, where the plaintiff was attempting to cross, was built by the defendant or by their assistance and consent, for the mutual convenience and advantage of the defendant and the public, and that the crossing had been adopted by the public in going to and from the freight and passenger depots of the defendant, and about other business of the public, then, under the issues in this case, the plaintiff is not bound to prove that there was a legally laid out road at such crossing, and that the defendant is bound at that point to use the same diligence and carefulness, as if the said road crossing was a legally laid out road.

If the jury believe from the evidence, that both plaintiff and defendants were approaching said crossing with equal rights to cross the same, and the servants of the defendants saw the said plaintiff approaching said crossing at the distance of ten or fifteen cars from said crossing, and at a sufficient distance to check up said engine, and neglected to check up said engine, the law is for the plaintiff; unless they further believe that said plaintiff had lawful warning of the approach of said engine and cars, and neglected to avoid the injury.

- 66 Stipulation filed April 10th, 1862, by counsel for plaintiff and defendant below.
- 67 Appeal Bond filed.
- 67 Certificate of Thomas Vennum, Clerk in said Court below, to the correctness of transcript of record.

ASSIGNMENTS OF ERROR.

- 1st. The finding of the jury is not supported by the evidence.
- 2d. The Court below gave improper instructions to the jury on the part of the plaintiff.
- 3d. The Court below refused to give proper instructions, as asked, on the part of the defendants in that Court.
- 4th. The Court below improperly altered the instructions asked for on the part of the defendants below.
- 5th. The Court below admitted improper evidence on the part of the plaintiff.
- 6th. The Court below erred in overruling the motion for a new trial, and in giving judgment.

DOUGLAS, WOOD & LONG,
Attorneys for Appellant.

141 273

The Ills Cent R.R. Co

vs

Charles Buckman.

Abstract

Filed April 20th 1862

S. L. Linn

clerk

1

The People of the State of Illinois

To all to whom these presents shall come,
Greeting:

Know Ye that we having caused to be inspected the records and proceedings of our Circuit Court in and for Iroquois County, Illinois do find there certain Records and Proceedings in the words and figures following to wit

United States of America

State of Illinois

Iroquois County

Pleas before the Honorable Charles R Starr Judge of the Twentieth Judicial Circuit and Presiding Judge of the Iroquois County Circuit Court in the State of Illinois at a term of the Circuit Court of said Iroquois County begun and held at the Court House in the town of Middleport in said County on the third Tuesday (the same being the nineteenth day) in the month of November February in the year of our Lord one thousand eight hundred and Sixty one Present.

Now Charles R Starr Presiding Judge of the

Twentieth Judicial Circuit

Charles W Wood State attorney of the

Twentieth Judicial Circuit

Luther J Clark Sheriff of Iroquois County Illinois

Thomas Kummer clerk of the Circuit Court of Iroquois County

And afterwards writ on the 30th day of May A. D. 1861 there was filed in the office of the Clerk of said Circuit Court a certain "Declaration" in the which reads in the words and figures following to-wit:

" State of Illinois Inoquois County Cir. Ct.
" Inoquois County ss. Of the June Term A.D. 1861.

" " Inoquois County to-wit Charles Buchner
" Complainant of the ^{Illinois Central Rail Road Company} J. C. R. R. Co. being in Custody &c of
" a Plea of Trespass on the case

("1st Count)

" For that whereas the said def^{endant}, before and at the
" time of committing the grievances hereinafter mentio-
" ned was the owner and proprietor of a certain Rail
" Road to-wit the Branch of the Illinois Central
" Rail Road extending from at or near the town
" of Centralia to the City of Chicago in the State of
" Illinois which said Branch of said Illinois Central
" Rail Road at the time of the committing of the
" grievances by the said defendant as hereinafter men-
" tioned passed through the County of Inoquois and
" State of Illinois aforesaid. And whereas also the
" said Defendant was at the said time of the committing
" of the grievances hereinafter mentioned owner and
" possessed of divers and sundry Cars engines and
" Locomotives which the said Defendant used
" upon said Branch of said Illinois Central
" Rail Road in carrying on the business of said
" defendant in carrying Passengers freight & other
" things to & from the said Town of Centralia
" to Chicago and in doing so the said defendant
" passed the said Engines Cars ^{and} Locomotives

And Afterwards writ on the 30th day of May A. D. 1861 there was filed in the office of the Clerk of said Circuit Court a certain "Declaration" in the which reads in the words and figures following to-wit:

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" Inoquois County ss. Of the June Term A.D. 1861.

" " Inoquois County to-wit Charles Buchner
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" a Plea of Trespass on the case

("1st Count)

" For that Whereas the said def^{endant}, before and at the
" time of committing the grievances hereinafter mentio-
" ned was the owner and proprietor of a certain Rail
" Road to-wit the Branch of the Illinois Central
" Rail Road extending from at or near the town
" of Centralia to the City of Chicago in the State of
" Illinois which said Branch of said Illinois central
" Rail Road at the time of the committing of the
" grievances by the said defendant as hereinafter men-
" tioned passed through the County of Inoquois and
" State of Illinois aforesaid. And whereas also the
" said Defendant was at the said time of the committing
" of the grievances hereinafter mentioned owner and
" possessed of divers and sundry Cars engines and
" Locomotives which the said Defendant used
" upon said Branch of said Illinois Central
" Rail Road in carrying on the business of said
" defendant in carrying Passengers freight & other
" things to & from the said Town of Centralia
" to Chicago and in doing so the said defendant
" passed the said Engines Cars ^{and} Locomotives

" over and along said Branch of said Illinois Central
 " Rail Road through said Iroquois County, and
 " the said defendant being the owner and pro-
 " prier of said Rail Road and being the owner
 " and possessed of said Cars Engines and Locomotives
 " which said defendant used upon and run over
 " and upon said Rail Road as aforesaid —
 " Thereupon the said Defendant heretofore torrit
 " on the Thirtieth day of August a D 1860 at
 " the County of Iroquois aforesaid then & then
 " being a body corporate and being the owner
 " of and possessed of the said Engines Cars and
 " Locomotives as aforesaid, and which said Cars
 " Engines and Locomotives the said defendant then
 " and then operated and run over along and
 " upon said Branch of said Illinois Central
 " Rail Road through the said County of Iroquois
 " And Whereas at the time and place aforesaid torrit
 " at Chebasse in said County of Iroquois on the said
 " Thirtieth day of August a D 1860, there was a
 " Public highway leading and constructed across
 " the said Branch of the said Illinois Central Rail
 " Road track for the use and benefit of the public
 " to cross over from one side of the said Rail Road
 " track to the other side thereof at all times when
 " ever it suited the convenience of any member of
 " the public to do so, which said public Highway
 " the travelling Public and Neighbors in and about
 " the said Town of Chebasse and Surrounding County
 " had adopted and ^{then} used as a place
 " of crossing said Branch of said Illinois Central

Rail Road as a public highway to cross over from one side of the said Rail Road track to the other side thereof with horses Carriages and buggies and wagons whenever an occasion required them so to do to wit at the place aforesaid which said crossing of the said Rail Road track the said Public had used along time before and up to the time of the committing of the grievances hereinafter mentioned and still do use the same as a Public highway for the purposes aforesaid And Whereas the said Plaintiff was then and there the owner and possessed of a horse and Buggy of great value to wit of the value of Two hundred Dollars of Lawful Money of the United States. And Whereas the said Plaintiff was then and there to wit on the 30th day of August A.D. 1860 at Chetawau in said County of Croquis driving his said horse and buggy along said public highway from the West side of said Branch of said Illinois Central Railroad to the East side thereof and while the said Plaintiff was in the act of crossing and attempting to cross said Rail Road track with his said horse and Buggy at the time and place aforesaid along said public highway leading across said Rail Road track as aforesaid with all reasonable care and diligence and speed One of the said defendants Locomotives with a car attached thereto which was then and there managed directed and controlled by the servants of the said defendant in a rapid manner approached the said

Public highway where the said Rail Road crossed
the same without the knowledge of the said
Plaintiff at the same time when the said Plaintiff
was so attempting to cross said Rail Road
track as aforesaid.

And the said Plaintiff avers that it was the duty
of the said Defendant to ring a Bell or blow a
Whistle at the distance of at least Eighty Rods
from the place where the said Rail Road track
then and there crossed the said public highway
and to have kept the same ringing or whistling
at intervals until the said Locomotive and car
should have crossed the said public highway,
Yet the said Defendant not regarding such duty
but wholly disregarding the same did not
ring such bell or blow such whistle at the
distance of at least Eighty rods from the
said place where the said Rail Road crossed
said public highway when the said Locomotive
and car was approaching the said crossing
and keep the same ringing or whistling at
intervals until the said Locomotive and
car crossed said public highway. But on the
contrary the said Defendant so carelessly neg-
ligently and unskillfully ran said Locomotive
and car at a very rapid and fast Rate with-
out ringing such bell or blowing such whistle
or causing the same to be done in the manner
and form as it was the duty of the said
Defendant to do in manner and form as
aforesaid as the said Locomotive and car.

approached said crossing and in consequence of said neg-
 lect carelessness and unskillfulness in not ringing
 said Bell or blowing said whistle in manner and
 form as it was the duty of the said Defendant
 to do as aforesaid the said Plff. Plaintiff had no
 knowledge or warning that the said Locomotive
 and car were approaching said crossing when
 he was attempting to cross said Rail Road track
 in manner and form before stated and at the time
 and place aforesaid with his said horse and Buggy
 aforesaid and in consequence thereof the said
 Locomotive with the said car attached there-
 to then and there struck and entirely destroyed the
 said horse and buggy and the said Locomotive
 then and there with all its power and force and
 with great violence forced and threw the said
 Plaintiff off and from his said Buggy against
 the Platform at the Depot of the said Defendant
 at the Town of Chebawse in said County of Broome
 aforesaid by means whereof one of the arms of
 the said Plaintiff became and was fractured and
 badly broken and bruised and one of the legs
 the said Plaintiff was fractured and badly bruised
 and the said Plaintiff was otherwise greatly
 injured wounded and bruised in so much that
 the said Plaintiff then and there became and
 was sick sore lame and disordered for a
 long space of time to wit from thence hitherto
 and during all of which time the said Plaintiff
 suffered and underwent great pain of body
 and anguish of mind and lost the use of his
 said arm from which he has not recovered

and was during all that time hindered and delayed
 from carrying on transacting and proceeding in
 his lawful and necessary affairs and business by
 him during that time to be performed and trans-
 acted and thereby lost and was deprived of great
 gains and profits which had been accustomed
 to arise and accrue and which otherwise would
 have been certain to arise and accrue to the said
 Plaintiff from the transacting and carrying on
 of the same and also by means of the premises
 last aforesaid the said Plaintiff was then and
 there forced and obliged to pay lay out and
 expend divers large sums of money amounting
 in the whole to a large sum of money to wit
 The sum of Two hundred dollars in and
 about the curing and endeavoring to cure
 the said fractured broken arm and bruises
 and wounding and sickness and disorder of
 him the said Plaintiff to wit at the County of
 Croquis aforesaid

(2nd Count)

And for that Whereas also the said Defendant before
 and at the time of committing the grievances
 hereinafter mentioned was the owner and possessor
 of a certain Rail Road to wit the Branch of
 the Illinois Central Rail Road extending from
 Centralia to the City of Chicago in the State of
 Illinois, which said Branch of said Illinois
 Central Rail Road at the time of the committing
 of the grievances by the said Defendant as
 hereinafter mentioned passed through the County
 of Croquis aforesaid.

And whereas also the said Defendant was at the time of committing of the grievances hereinafter mentioned, ^{the} owner and possessor of divers and sundry Cars Engines and Locomotives which the said Defendant used upon said Branch of the said Illinois Central Rail Road in carrying on the business of the said Defendant upon and along the said Branch of the said Rail Road in carrying Passengers freight and other things and running Locomotives and cars to and from Chicago and in doing so the said defendant passed the said Engines Cars and Locomotives over and along said Branch of said Illinois Central Rail Road through said Croquis County ~ And the said Defendant so being the owner and so possessor of said Branch of said Rail Road and Engines cars and Locomotives as aforesaid for the use and purposes aforesaid thereupon the said defendant heretofore torrid on the thirtieth day of August A D 1860 at the county of Croquis aforesaid then being a body corporate and using and carrying on business upon said Branch of said Rail Road with the engines cars and Locomotives as aforesaid And whereas at Chebouse in said County of Croquis on the day and year last aforesaid at the time of committing the grievances hereinafter mentioned there was a public road which crossed the said Branch of the Illinois Central Rail Road and which said public road was then and there used by the public in crossing the said Branch with horses

Wagons Carriages and buggies in crossing
from one side of said Rail Road track
back to the other side thereof at all times
whenever it suited the convenience of said
public so to do which said road the travelling
public and Neighbors in and about the said
Town of Chebouse and Surrounding Country
had adopted and then and there used as
a place of crossing said Branch of said
Illinois Central Rail Road Track to the other
side thereof with horses wagons carriages and
buggies on the day and year last aforesaid and
had done so a long time before and still con-
tinue so to do to wit at the County aforesaid,
And whereas the said Plaintiff was then and
there the owner and possessed of a certain other
horse and buggy of great value to wit of the
value of Two hundred dollars and whereas
the said Plaintiff was then and there to wit
on the day and year last aforesaid at Chebouse
in said County of Ingham driving his said
last mentioned horse and Buggy along said
Road from the west side of said Branch
of said Illinois Central Rail Road to the East
side thereof - And while the said Plaintiff was
then and there driving his said horse and buggy
in said Road and was in the act of crossing
and attempting to cross said Rail Road track
with his said horse and buggy with all
reasonable care and diligence and speed
one of the said Locomotives of the said defendant

With a Car attached thereto which was then and there managed directed and controlled by the Servants of the Said Defendant in a Swift and rapid Manner approached the Said Road where and at the time the Said Plaintiff was attempting to cross the Said Rail Road track as aforesaid without the Knowledge of the Said Plaintiff and the Said Plaintiff avers that it was the duty of the Said Defendant to ring a bell or blow a whistle at the distance of at least Eighty Rods from the place where the said Rail Road then and there crossed the Said Road so used by the public as aforesaid and to have kept the same ringing or whistling at intervals until the Said Locomotive and car should have crossed the Said public Road. and yet the Said Defendant not regarding such duty but wholly disregarding the same did not ring such bell or blow such whistle at the distance of at least Eighty Rods from the Said place where the Said Rail Road crossed said public road when the Said Locomotive and car was approaching the Said crossing and kept the same ringing or whistling at intervals until the Said Locomotive and car crossed said public Road but on the contrary the Said Defendant so carelessly, Negligently and unskillfully ran Said Locomotive and car at a very rapid and unusual rate without ringing such bell or blowing such whistle or causing the same to be done in manner and form

12.

as it was the duty of the said defendant to do
in manner and form aforesaid as the said
Locomotive and car approached said crossing
and in consequence of said neglect carelessness
and unskillfulness in not ringing the said
Bell or blowing said whistle in manner and
form as it was the duty of the said def-
endant to do as aforesaid The said Plaintiff
had no knowledge or warning and could not
see that the said Locomotive and car was
approaching said crossing when he was
attempting to cross said Rail Road at
the time and place aforesaid and in the
manner and form aforesaid with his said
horse and buggy aforesaid and in consequence
whereof the said Locomotive with the
said car attached thereto then and there
struck and entirely destroyed the said horse
and buggy of the said Plaintiff and the said
Locomotive then and there with all its force
and power and with great violence then
threw the said Plaintiff off and from his
said buggy against the Platform at the
Depot of the said Defendant at the town
of Chebouse aforesaid by means whereof
one of the arms of the said Plaintiff became
and was fractured and broken and bruised
and one of his legs was fractured and
badly bruised and the said Plaintiff was
otherwise greatly injured wounded and
bruised in so much that the said Plaintiff
then and there became and was sick

12.

as it was the duty of the said defendant to do
in manner and form aforesaid as the said
Locomotive and car approached said crossing
and in consequence of said neglect carelessness
and unskillfulness in not ringing the said
Bell or blowing said whistle in manner and
form as it was the duty of the said def-
endant to do as aforesaid The said Plaintiff
had no knowledge or warning and could not
see that the said Locomotive and car was
approaching said crossing when he was
attempting to cross said Rail Road at
the time and place aforesaid and in the
manner and form aforesaid with his said
horse and buggy aforesaid and in consequence
whereof the said Locomotive with the
said car attached thereto then and there
struck and entirely destroyed the said horse
and buggy of the said Plaintiff and the said
Locomotive then and there with all its force
and power and with great violence then
threw the said Plaintiff off and from his
said buggy against the Platform at the
Depot of the said Defendant at the town
of Chebouse aforesaid by means whereof
one of the arms of the said Plaintiff became
and was fractured and broken and bruised
and one of his legs was fractured and
badly bruised and the said Plaintiff was
otherwise greatly injured wounded and
bruised in so much that the said Plaintiff
then and there became and was sick

14.

of the Illinois Central Rail Road extending
 from Centralia to Chicago in the State of
 Illinois which said Rail Road at the time
 of committing the grievances hereinafter
 mentioned passed through the said County
 of Proquois And Whereas the said Defen-
 dant was at the time of committing the
 grievances as hereinafter stated the owner
 and possessor of divers and sundry cars
 Engines and Locomotives which the said
 Defendant then and there used upon said
 Rail Road in carrying passengers freight
 and other things and run the said cars
 Engines and Locomotives over and along
 said Rail Road to and from said
 City of Chicago and to and from the said
 Town of Centralia and in doing so the
 said Defendant run and passed said
 cars engines and Locomotives over said
 Rail Road through said County of Proquois
 And Whereas at the time of the committing
 of the grievances hereinafter stated
 there was a Public Road which crossed
 the said Rail Road at the Town of Chetane
 in said County of Proquois which had been
 used by the public a long time before and
 up to that time as a public Road and
 crossing said Rail Road at the place
 aforesaid in crossing over from one side
 of said Rail Road track to the other
 side thereof with Horses carriages
 buggies and other vehicles at all times.

whenever it suited the pleasure or convenience
 of any member of the Public to do so And
 Whereas afterwards to wit on the Thirtieth
 day of August A. D. 1860 at the County
 of Inyoquis aforesaid the said Plaintiff
 was the owner and possessed a certain other
 horse and buggy of great value to wit of
 the value of Two hundred dollars of lawful
 money and being one of the members of said
 Public he the said Plaintiff then and there
 attempted to drive his said horse and
 buggy across said Rail Road Track, —
 along said Public Road and as he was so
 attempting to drive his said horse and
 buggy across said Rail Road Track at
 the time and place aforesaid with all
 reasonable care and diligence and speed
 on his part one of the said Locomotives
 of the said Defendant with a car attached
 thereto which was then and there managed
 directed and controlled by the Servants of
 the said Defendant in an unusual fast
 and rapid manner and with greater
 speed than the said Defendant usually runs
 said engines cars and locomotives upon
 said Rail Road and without the speed of said
 Locomotive and car being slackened approached
 said Public Road from the South, and going north
 at the time when the said Plaintiff was in the act
 of crossing and attempting to cross said Rail
 Road at the place aforesaid without the
 knowledge of the said Plaintiff and the said

Plaintiff avers that he had no knowledge or means of knowing that the said Locomotive was approaching said Public Road nor had he been in anywise advised of the same until the said Locomotive and car were so near that it was out of his power to make his escape either with himself or with his said horse and buggy. And the said Plaintiff avers that it was the duty of the said Defendant to cause the speed of the said Locomotive and cars to be slackened and to approach said public Road with care prudence and diligence and to have caused an alarm and warning to the said Plaintiff and all other persons by ringing a Bell or blowing a whistle within a reasonable distance of said crossing that said Locomotive and car was approaching said crossing of said public road so that the said Plaintiff and all other persons would have thereby been notified of the approach of said Locomotive and car if the said defendant well knowing the premises and wholly disregarding such duty did not cause the speed of said Locomotive and car to be slackened and did not approach the said Public Road with care prudence and diligence and did not give an alarm and warning nor cause the same to be done to the said Plaintiff by ringing such bell or blowing such whistle within a reasonable distance ~~distance~~ from said crossing of said public Road nor did the said Defendant give notice of such approach in any other manner but on the contrary the said Defendant

Wholly neglected to do or cause the same
 to be done and then and there and thereby the
 Said Plaintiff was wholly unadvised of the
 approach of said Locomotive and car at the
 time he attempted to cross said Rail Road
 as aforesaid as aforesaid and without the
 fault or neglect of the said Plaintiff and in
 consequence of such neglect and carelessness
 and imprudence on the part of the said Defendant
 the said Locomotive with said Car attached
 thereto then and there struck and entirely de-
 stroyed the said Horse and buggy of the said
 Plaintiff and the said Locomotive with the
 said car attached then and there with all
 its power and force and with great violence
 threw the said Plaintiff off and from his
 said Buggy against the Platform at the
 depot of the said Defendant at the town of
 Chebause in said County of Stroganovis, by
 means whereof one of the arms of said Plaintiff
 became and was fractured and broken and
 bruised and also one of the legs of the said
 Plaintiff then and there became and was badly
 fractured and bruised and the said Plaintiff
 was otherwise greatly injured bruised and
 wounded in so much that the said Plaintiff
 then and there became and was sick sore
 lame and disordered for a long space of
 time to wit from thence hitherto and
 during all that time the said Plaintiff
 suffered and underwent great pain of

Body and anguish of mind and lost the use of
 his said arm and from which he has not yet
 recovered and was during all that time hin-
 dered and delayed from carrying on trans-
 acting and proceeding in his lawful and
 necessary affairs and business by him during
 that time to be done performed and transacted
 and thereby lost and was deprived of great
 gains and profits which had been accustomed
 to arise and accrue and which otherwise
 would have continued to arise and accrue
 to the said Plaintiff from the transacting
 and carrying on of the same and also by
 means of the premises last aforesaid the
 said Plaintiff was then and there forced
 and obliged to pay lay out and expend
 divers large sums of money amounting in
 all to the sum of Five hundred Dollars
 of like lawful money in and about the curing
 and attempting to cure the said fractures
 broken arm bruises and wounding and
 sickness and disorder of him the said
 Plaintiff to wit at the County of Croquis aforesaid
 And for that Whereas also the said defendant
 before and at the time of committing the
 grievances hereinafter mentioned and being
 a body corporate was the owner and possessor
 of a certain other Rail Road to wit the
 Branch of the Illinois Central Rail Road
 extending from Centralia to Chicago in
 said State of Illinois which said Rail
 Road at the time of the committing of

(11th Count)

the grievances as hereinafter stated passed
 through the said County of Dequois and
 Whereas the said Defendant was at the time
 of the committing the grievances as hereinafter
 mentioned the owner and possessor of divers and
 sundry cars engines and locomotives which
 the defendant then and there used upon said
 Rail Road in carrying on the business of said
 Rail Road in carrying Passengers freight and
 other things and in running said cars
 engines and locomotives over and along
 said Rail Road to and from the City of
 Chicago and to and from the town of Centralia
 and in doing so the said defendant run and
 passed said cars engines and locomotives
 over said Rail Road through said County
 of Dequois And Whereas also the said
 defendant long before the committing of
 the grievances hereinafter mentioned built
 and constructed a public Wagon and
 carriage Road at the town of Chebaner
 in said County of Dequois across the track
 of the said Rail Road for the use and
 benefit of the public in crossing said Rail
 Road track from one side of said Rail Road
 track to the other side thereof with horses
 Carriages and buggies which said public
 wagon and carriage road the said defendant
 continued at the place aforesaid for the use
 and benefit of the public for the purposes aforesaid
 from the time the same was built and constructed

29.

as aforesaid up to the time of committing
the grievances hereinafter mentioned and
from thence hitherto as such public wagon
and carriage Road for the use and benefit
of all persons desiring or wishing to cross
from one side of said Rail Road track
to the other side thereof at all times
whenever it suited the convenience of such
persons to cross and the said public adap-
ted and used the said carriage and wagon
road in manner and form aforesaid and for
the uses and purposes aforesaid from the
time the same was so constructed up to
the time of the committing the grievances
aforesaid and from thence hitherto, and
whereas afterwards to wit on the 30th day of
August A D 1860 at the County of Croquis aforesaid
the said Plaintiff was the owner and
proprietor of a certain other horse and buggy
of great value to wit of the value of Two hundred
Dollars of Lawful Money and then and there
being one of the members of said Public
he the said Plaintiff then and there drove his
said horse and buggy along said public road
and attempted to drive the same across
said Rail Road track and as he was so
attempting to drive his said horse and
buggy across said Rail Road track at the
time and place aforesaid along said public
road and while and at the time the said
Plaintiff was so attempting to cross and was
in the act of crossing said Rail Road

" with his said horse and buggy with all
" reasonable care dilligence and Speed on his
" part one of the Said Locomotives of the
" Said Defendant with a car attached thereto
" which was then and there managed directed
" and controlled by the Servants of the Said
" defendant rapidly approached said Wagon
" and carriage Road without the Knowledge
" or means of Knowing on the part of the Said
" Plaintiff at the time when the Said Plaintiff
" was so attempting to cross Said Rail Road
" track aforesaid and the said Plaintiff avers
" that it was the duty of the Said Defendant to
" ring a bell or blow a whistle at the distance
" of at least Eighty Rods from the place where
" the Said Rail Road track then and there
" crossed the Said Wagon and Carriage Road
" and to have kept the same ringing or whistling
" at intervals until the Said Locomotive and
" car crossed Said Wagon and Carriage Road
" at the time when Said Locomotive and car
" were approaching as aforesaid Yet the Said
" Defendant wholly disregarding such duty
" did not ring such bell or blow such whistle
" and keep the same ringing or whistling as
" it was the duty of the Said Defendant to do
" in manner and form aforesaid but the said
" Plaintiff saith that the Said defendant wholly
" neglected so to do and the said Defendant
" so carelessly negligently and unskillfully
" run said Locomotive and car at a very

rapid rate without ringing such Bell or blowing such Whistle or causing the same to be done in manner and form aforesaid as the said Locomotive and car approached said crossing that in consequence thereof the said Plaintiff had no knowledge or warning that the said Locomotive and car were approaching said crossing and without the fault of the said Plaintiff then and there when he was attempting to cross said Rail Road track as aforesaid with his said horse and buggy And in consequence of said neglect carelessness and unskillfulness the said Locomotive with said car attached thereto then and there struck and entirely destroyed the said horse and buggy of the said Plaintiff and the said Locomotive then and there with all its power and force and with great violence threw the said Plaintiff off and from his said Buggy against the Platform at the Depot of the said Defendant at the Town of Chebouse in said County by means whereof one of the Arms of the said Plaintiff became and was fractured, broken and bruised and also one of the ^{said} Plaintiff's legs was fractured and badly bruised and the said Plaintiff was otherwise greatly injured wounded and bruised in so much that the said Plaintiff then and there became sick and was sick sore lame and disordered for a long space of time to wit from thence hitherto and during all which time the said Plaintiff suffered and underwent

" great pain of body and anguish of mind
 " and lost the use of his said arm from which
 " he has not recovered and was during all that
 " time hindered and delayed from carrying
 " on transacting and proceeding in his lawful
 " and necessary affairs and business by him
 " during that time to be done performed
 " and transacted and thereby lost and was
 " deprived of great gains and profits which
 " had been accustomed to arise and accrue
 " and which otherwise would have continued
 " to arise and accrue to the said Plaintiff
 " from the transacting and carrying on of
 " the same and also by means of the premises
 " last aforesaid the said Plaintiff was then
 " and there forced and obliged to pay lay out
 " and expend divers large sums of money
 " amounting in all to the sum of Five hundred
 " Dollars ^{more or less} about curing and endeavoring
 " to cure the said fractures broken arm and
 " bruises and wounding and sickness and disorder
 " of him the said Plaintiff to wit at the County
 " of Croquis aforesaid

(5th Count)

" And for that whereas also the said Defendant
 " before and at the time of the committing of the
 " grievances hereinafter mentioned and being
 " a Body Corporate was the owner and
 " possessed of a certain Rail Road to wit
 " the Branch of the Illinois Central Rail Road
 " extending from Centralia to Chicago in
 " said State of Illinois which said Rail

Road at the time of committing the grievances
hereinafter mentioned passed through said
County of Broquwis And whereas the said
Defendant was also at the time of committing
the grievances hereinafter mentioned the
owner and possessor of divers and sundry
cars engines and Locomotives which the
said Defendant then and there used upon
said Rail Road in carrying Passengers freight
and other things and in carrying on the
business of said Rail Road generally and
in doing so the said defendant run said
cars engines and Locomotives over said
Road through said County of Broquwis
And whereas at the time of committing
the grievances hereinafter mentioned there
was a public Road across the said Rail
Road at the Town of Chebaise in said
County of Broquwis which had been used
as a public highway long before and up to
the time of the committing the grievances
hereinafter mentioned by the Public as a
place of crossing said Rail Road from
one side of said Rail Road track to the
other side thereof with horses carriages
wagons and buggies whenever it suited
the interest Convenience or pleasure of
the Members of said Public to cross
said Rail Road track in manner and
form aforesaid And whereas afterwards
to wit on the 30th day of August 1860
at the County of Broquwis aforesaid

the said Plaintiff was the owner and possessor
of a certain other horse and buggy of great
value to wit of the value of two hundred dollars
of the like lawful money and then and there
being one of the members of the said Public
he the said Plaintiff then and there drove
his said horse and buggy along said public
road and attempted to cross said Rail
Road where the said Public Road crossed
said Rail Road and then and there attempted
to drive his said horse and buggy across
said Rail Road track and the said Plaintiff
avows that as he was attempting to drive his
said horse and buggy across said Rail
Road track as aforesaid along the said
public Road as aforesaid and at the time
when he was attempting to cross said
Rail Road with his said horse and Buggy
as aforesaid with all reasonable care and
diligence and speed on his part one of the
said Locomotives of the said Defendant
with a car attached thereto which was
then and there managed directed and
controlled by the servants of the said
Defendant in a very careless negligent
and imprudent and fast and rapid manner
which was then and there going north
approached said crossing of said public
Road at the same time when the said
Plaintiff was then and there attempting
to cross said public public Road

with his said horse and buggy as aforesaid without the knowledge or the means of knowing of the said Plaintiff that said Locomotive and car was approaching said crossing until it was too late for the said Plaintiff to make any escape either of himself or of his said horse and Buggy and the said Plaintiff avers that the said Defendant did not approach said crossing with said Locomotive and car with care caution prudence and diligence nor did the said Defendant cause the same to be done and that in consequence thereof the said Plaintiff had no knowledge nor had the means of knowing when the said Locomotive was so approaching said crossing as aforesaid when he the said Plaintiff was crossing said Rail Road track as aforesaid with his said horse and buggy as aforesaid and in consequence of said neglect carelessness imprudence and unskillfulness of the said Defendant the said Locomotive with the said Car attached thereto then and there struck and wholly and entirely destroyed the said Buggy and the said horse of the said Plaintiff and the said Locomotive then and there with all its power and force and with great violence threw the said Plaintiff off and from his said Buggy against the Platform at the Depot of the said Defendant at said Town of Chebass in said County of

" Choquois by means whereof one of the arms
" of the Said Plaintiff became and was
" fractured and bruised and broken and
" also one of the Said Plaintiffs Legs was
" bruised and fractured and the said Plaintiff
" was otherwise greatly injured wounded bruised
" and maimed in so much that the Said Plaintiff
" then and there became and was Sick Sore
" Lame and disordered for a long space
" of time to wit from thence hither to
" and during all that time the said Plaintiff
" suffered and underwent great pain of body
" and anguish of mind and lost the use of
" his Said arm from which he has not
" recovered and was during all that time
" hindered and delayed from carrying on
" transacting and proceeding in his lawful
" and necessary affairs and business
" by him during that time to be done per-
" formed and transacted and thereby lost
" and was deprived of great gains and
" profits which had been accustomed
" to arise and accrue and which otherwise
" would have continued to arise ^{and} accrue
" to the Said Plaintiff from the transacting
" and carrying on of the Same, and also
" by means of the premises last aforesaid
" the Said Plaintiff was then and there
" forced and obliged to pay lay out and
" expend divers and sundry large sums
" of Money amounting in all to the sum

28.

of Two hundred Dollars in and about the
 curing and endeavoring to cure the said
 fractures broken arm and bruises and
 wounding and sickness and disorder of
 him the said Plaintiff Torrey at the
 County of Croquis aforesaid. To the damage
 of the said Plaintiff of Fifteen Thousand
 Dollars and therefore he Prays his Suit &c

Wm. J. Blades &
 Fletcher & Kay
 Attys. for Pff.

State of Illinois
 Croquis County ss.

I Charles H. Wood being
 duly sworn do say that the
 above and foregoing is a true and accurate copy
 of the original Declaration filed in this cause
 and that I have compared the same with the
 original declaration and further say so.

Subscribed & Sworn to before me
 this 11th day of April A.D. 1862
 Thomas Kemmum Clerk

Charles H. Wood

and afterwards torrid on the 19th day of November A. D. 1861 There was filed with the clerk of said court certain Pleas which read in the words and figures following to wit

Charles Buchner	} Chicago Cir. Court
"	
"	
The Illinois Central	} of the November
Rail Road	

And the said Defendants by Douglas, Wood & Long their attorneys come and defend the wrong and injury whereof and say that they are not guilty of the said supposed Grievances above laid to their charge or any or either of them or any part thereof in manner and form as the said Plaintiff hath above thereof complained against them and of this they the said Defendants put themselves upon the Country &c

" And the Plaintiff doth
" the like

" Douglas, Wood & Long
" for Defts

" Oliver & Blades &
" Metcher & Kay for Plff "

" And for a further Plea
" in this behalf the said Defendants say
" Actio Non because they say that they did
" ring their Bell and Blow their Whistle on

30.

" Their said Engine at the distance of Eighty Rods
" from the place where their Rail Road
" approached said Crossing; and that they
" did not run their train at a very fast
" and rapid rate but conducted their said
" train with care Skill and caution as they
" were bound to do and that the said supposed
" injuries to the said Plaintiff happened on
" account of his own carelessness negligence
" and inattention and not on account of any
" want of care Skill and attention on the
" part of these Defendants or their agents
" and of this they put themselves upon the
" Country &c

Douglas, Wood & Long
Attorneys

And afterwards to wit on the
Said 9th day of November A.D. 1861 There
was filed with the Clerk of said Court a
certain Summons which reads in the
words and figures following to wit

State of Illinois
Choquois County ss
Charles Buchner

Choquois Circuit Court
November Term 1861

vs
The Illinois Central
Rail Road Company

And the said Plaintiff

as to the said Special plea of the said Defen-
 dants by them above pleaded faith that
 the same and the matters therein contained
 the manner and form as the same are above
 pleaded and set forth are not sufficient
 in law to bar or preclude him the said
 Plaintiff from having or maintaining his
 aforesaid action thereof against the said
 Defendants and that he the said Plaintiff
 is not bound by law to answer the same
 and this he the said Plaintiff is ready to
 verify Wherefore by reason of the insufficiency
 of the said Special plea in this behalf
 The said Plaintiff prays judgment and
 and his damages by him sustained on
 occasion of the committing of the said
 grievances to be adjudged to him &c

" Souler & Blades &
 " Fletcher & Kay
 " For Piffs.

And Afterwards to wit on the 19th Day of November a D 1861 the same being one of the regular days of the November Term of said Court Croquis County Circuit Court for said year and 1861 The said Court being then duly organized and sitting as a court for the transaction of judicial business Certain other proceedings were had and Entered of Record by order of said Court in the words and figures following to wit

" 223

" Charles Buchner	} Case "
" " "	
" The Illinois Central	} "
" Rail Road Company	

" This day comes the Plaintiff by James Blades, Fletcher & Kay his Attorneys and files a demurrer to the Defendants Special Plea "

And afterwards to wit on the 20th Day of November a D 1861 it also being one of the regular days of the November Term of said Court for said year 1861 The said Court being then duly organized as aforesaid Certain other proceedings were had and Entered of Record by order of said Court in the words and figures following to wit.

" 223

" Charles Buchner	} Case "
" " "	
" The Illinois Central	} "
" Rail Road Company	

" The Demurrer to the

Special Plea coming up for argument it is ordered by the Court that the same be and it is sustained to said Special Plea, And now comes the Defendant by Wood, Long and Paddock attorneys and enters a motion supported by an affidavit for a Rule of this Court compelling the Plaintiff in this cause to give Security for costs, Comes also the Plaintiff by his attorneys and enters his Motion to the Court for leave to the Plaintiff to prosecute this Suit in forma pauperis without costs ~ And the Court after hearing the arguments of Counsel ordered that the Motion for leave to prosecute as a poor person be overruled and it is further ordered that the Plaintiff do file a Bond for costs in this cause with Security to be approved by this Court on or before two o'clock in the afternoon of Monday of the second week of this term of the Court.

And afterwards to wit on the 27th day of November A.D. 1861 it also being one of the regular days of the November Term of said Court for said year 1861 the said Court being then duly organized as aforesaid certain other proceedings were had and entered of Record in by order of said Court in the words and figures following to wit.

Charles Buchner

vs

} case

The Illinois Central
Rail Road Company

" On Motion of Plaintiffs
Attorneys it is ordered that this cause be set
down for trial at two o'clock in the afternoon
of tomorrow Subject to good cause shown
by the Defendant for further continuance "

And afterwards to wit on the 29th
Day of November A. D. 1861 it also being one
of the Regular days of the November term of
said court for said year 1861 The said Court
being then duly organized as aforesaid Certain
other proceedings were had and entered of
Record by order of said Court in the words
and figures following to wit

Charles Buchner

vs

} case

The Illinois Central
Rail Road Company

" And now come the
Parties to this cause the Plaintiff in Person and
by Oliver, Blades, Fletcher & Kay his attorneys
and the Defendant by Wood, Long^{and} Paddock
its attorneys and by order of court came
the Jurors of a Jury to wit. Jonathan Wright
Alouzo Taylor, James Cairns, C. R. Brown
E. N. Skete, William Atkins, A. H. Perry

" John Pagan. A. W. Beckett. Lewis W. Hunt. Erwin
 " Peck. and Putnam Gaffield Davelos good and lawful
 " men who were then and there duly empannelled
 " and sworn to well and truly try this cause
 " upon the issue joined according to the evidence
 " and after hearing a portion of the evidence, upon
 " the adjournment of Court the jury by direction
 " of the court are allowed to separate and ordered
 " to report themselves for the further hearing
 " of this case at the organization of Court to-
 " morrow morning."

And afterwards to-wit, on the 30th
 day of November it also being one of the Regular
 days of said Court for said year a D 1864 The
 said court being then duly organized as aforesaid
 certain other proceedings were had and entered
 of Record in the words and figures following to-wit

" Charles Puckert
 " vs
 " The Illinois Central
 " Rail Road Company } Case"

" The jury heretofore
 " Empannelled in this cause after hearing the
 " remainder of the Evidence in this cause the
 " argument of counsel and the instructions of the
 " Court retire in charge of an officer to consider
 " of a Verdict and afterwards return into the
 " court with a Verdict in substance as follows.
 " We the jury find the Defendant Guilty and

assess the Damages of the Plaintiff at Two Thousand Five hundred Dollars ~ Come now the Defendants attorneys and enter their Motion for a New trial in this Cause

And afterwards to wit on the 19th day of December A.D. 1861 it also being one of the regular days of ^{the December Term of} said Court for said year 1861 the said Court being then duly organized as aforesaid certain other proceedings were had and entered of Record by order of said Court in the words and figures following to wit

223 Charles Ruehner vs The Illinois Central Rail Road Company } Case"

" The Motion by defendant for a new trial in this cause coming up for argument and the court having duly considered the Matter ordered that said Motion be and it is overruled

" It is therefore considered and ordered by the Court that the Plaintiff do have and recover of and from the Defendant the said Sum of Two Thousand and Five hundred Dollars for his damages and also his costs and charges by him about his Suit in this behalf expended and that he have execution therefor against the said Defendant

And now come Defendants attorneys and enter their exception to the decision of the

" Court in overruling said Motion and rendering
 " Judgment as aforesaid and enter their Motion
 " for an appeal in this cause to the Supreme Court
 " of this State. Whereupon it is ordered that
 " the appeal be granted on the Defendant filing
 " an appeal Bond in this cause in the sum of
 " Five Thousand Dollars with John W. Douglas
 " and William C. Osborn as Securities thereon
 " within thirty days from this date

And afterwards to wit on the 21st day
 of December A.D. 1864 it also being one of the regular days of the
 November Term of said Court for said year 1864. The said Court
 being then duly organized as aforesaid. Certain other
 proceedings were had and entered of record by order of
 said Court in the words and figures following to wit

" Charles Buchner
 " is } Case"
 " The Illinois Central
 " Rail Road Company

" On motion it is ordered
 " that the Defendant do file its Bill of Exceptions
 " with the clerk of this Court within thirty
 " days from this date.

Charles Buchner

The Illinois Central }
 Rail Road Company } Bill of Exceptions

" Be it Remembered
 that on the trial aforesaid above entitled cause
 the Plaintiff to maintain the issues on his part
 offered the Testimony of the following witnesses
 to wit

Charles M. Bigelow Sworn

I Reside in
 Chetause and have done so for Twenty Months
 was there in August 1860. On day aforesaid last
 week of August I was standing in my Shop
 and heard a Train and knowing it to be an
 unusual time I looked out of the Window
 and the first I saw was the hind wheels
 of a Wagon on the front of the Train
 and a man being thrown out on the Plat-
 form. I went right over and found men
 holding up the Plaintiff and he pretty soon
 fainted. The Train went on a little by and
 then came back. The horse in the Wagon
 wagon was killed, and the wagon was
 broken up so that it was not worth repair-
 ing. The wagon was probably worth forty
 Dollars before it was broken, the horse was
 worth in the neighborhood of one hundred dollars
 When the Surgeon came the Plaintiff was
 Stripped, his right arm was broken in three
 places smushing the Bone, he was thrown
 on to his head and his left Shoulder also

was bruised and his left leg was abraded some
This was in Croquis County, The Train was
what is called a wild train and it was running
at an unusual rate of speed. This Train was
within about a half hour from the time
the regular train was due from the North
and it had come from the South. The roar
of the train first attracted my attention and
I should judge it must have been running
at the rate of twenty miles an hour. Question
State whether there was a Road across the
Rail Road track at that place that was
used by the Public? objected to - question
allowed to which the Defendants then and
there Excepted - Ans. There is a Road there
it crosses the Rail Road upon one of the streets
of the town at right angles to the Rail Road
It runs from East to West a little South of
the Depot Buildings. There is a building
called the Passenger house in which the depot
man lives with rooms to accommodate the
public. A platform runs down to the Road
and north on the same side on the West
side is the freight Depot with a platform
extending north about the same distance
as the one on the other side. There is a
crossing both north and South of the
depot. Buchner was at the South crossing
The freight depot was built for the storing
of grain and for the accommodation of the
public I don't know who built the lower
crossing, it is kept in repair by the Public

furnishing the Material and the Rail Road hands doing the work. The Public to get back and forth to these Depots must go over one of these crossings. There are ^{no} no others within three or four miles - I cant tell the distance from the whistling post on the south up to the point where where Mr. Buchner was struck I did not see the cars till about the time they struck the wagon. They run north before they stopped seven hundred and twenty six feet They stopped immediately in front of the Section house. There was a Locomotive and one car called a caboose. When the Plaintiff was thrown out there is a Side Track which runs South before striking main Track some 800 feet. There were two cars on the side track South of the crossing the first one being forty five feet from the Crossing and the other one about twenty feet from that. The cars were coming from the South. There is a cut in the ground some six or seven feet ^{deep} below the crossing and at the deepest place it is perhaps ten feet deep. There was a large Pen about eight feet high standing on the highest ground of the cut about six or eight rods South of those cars. A person coming from the West towards the East could not see a train until he got on to the crossing. from a point six Rods west of the Road a train could not be seen for twelve to forty Rods below the crossing, and not until it was below where the side track comes on to the main track

The East Side of the Track is the most settled
The People at that time Shipped the most
of their grain through the Rail Road Depot
on the west side. I should judge the cars
were running at 20 or 25 miles an hour. I
came to this conclusion first from the sound
of the train and then from the quickness with
which it passed the Depot, and also from the
distance it run before it stopped after
the breaks were whistled on. I have had
some experience in handling breaks like
those used on this Road. The usual rate of
Speed for freight trains is from 14 to 18 miles
an hour - The Rogers break will stop an
Engine in going seven or eight Rods. To the
best of my recollection they whistled on the breaks
one hundred or one hundred and fifty feet north
of the Depot, but not till after they had struck
the Plaintiff. I heard them a minute before
they struck. I heard no bell ring or whistle
sounded before. State if you know what the
custom of said Rail Road was, prior to the
time the accident occurred in crossing their
track in regard to the Speed of the cars?
Question allowed and defendants excepted
Ans. Their custom is to ring the Bell at the
distance of Eighty Rods and Slack the Speed
of the train to eight miles an hour. But some
times they do not. Trains having business
there Slack their Speed but as it is a Flag
Station considered of little importance, they

generally go through at about twelve miles
 an hour. I have seen this same Engine run
 at 12 miles an hour. State whether you know
 of the Company having advertised the time
 of their regular trains? objected to. Objection
 overruled and exception taken Mrs Stewart
 say positively whether I had ever seen the
 notices posted up at that time. State whether
 that train was on the usual time. Question
 objected to and objection overruled to which the
 defendants excepted Mrs. it was not. It was
 nearly a half hour from the time the trains
 were due from the North. All the Day freights
 had gone north and there was no other due
 until half past eleven at night

"Crop - Ex. I was in my shop when I first heard the
 Train coming My shop was on the back end
 of the front tier of Lots and Three hundred
 feet east of the Passenger house My windows
 opened on the South and west I heard the
 cars and looked out and in half a minute
 saw them. I could see between two Buildings
 the lower end of the Depot I could see the train
 forty feet below the Depot My door on the East
 was open The cropping was 140 or 150 feet
 south of the Depot. I saw the Train about
 half way between the cropping and the depot
 I left my shop after the train passed. I
 could not see the Platform from my shop. I
 saw the hind wheels on the engine close by
 the Platform. I don't know where he was
 when he was struck - There are no boards

at the place where he was struck to indicate that it is a public crossing but north of the Depot there is a crossing with a board put up which says on it "Rail Road Crossing" The upper crossing is the Main Road. It has connections with the country roads. The lower crossing was put there to accommodate the public. The most of the crossing is on the south side - There is no work done at each side of the lower crossing, it is not needed. the cut in the Rail Road south is from six to seven hundred feet from the Depot Buildings. The crib is down four hundred and eighty feet from the Depot. It is about eight feet high and some twenty five feet wide. This was a kind of one horse wagon and a man on the seat could see men on the track better than I could on the ground the day of the accident I walked out west of the crossing from four to six rods couldn't see a train from the Depot down to the switch. I never looked when a train was on the tracks. There was a gap between the cars standing on the tracks and through it I could have seen the train some four or five rods before reaching the crossing. The Bell might have rung and I not heard it. The Plaintiff was a little deaf at that time and is yet. There were four or five persons over at the Depot when I got there I never run as an employee on this Rail Road. No man standing on the ground can judge as well of the speed of a train as

" a man on the Train who knows his business
 " I was standing by my bench talking with
 " John Hazard when I heard the train - He
 " called my attention to it and in about a
 " minute after I saw it

" Re Examination

" This lower crossing has level ground
 " on each side with plank fixed by the Rail
 " to drive over the to which could have seen
 " the other depends entirely upon their relative
 " Positions

" Dr Jehiel M. Warner Sworn

" I know the Plaintiff
 " as a Neighbor and a Citizen. Saw him in
 " fifteen or twenty minutes after he was hurt
 " by the Illinois Central Rail Road Cars, I was
 " 120 Rods South East of the Whistling post
 " when the train passed about four o'clock,
 " coming from an easterly course on the East
 " side of the track, I saw the cars when they
 " were three fourths of a mile South of the
 " Whistling post. Chetause was north,
 " when they were at the whistling post I
 " was South East of them and was sixty to
 " eighty Rods from the whistling post. I was
 " two thirds of a ^{half} mile from Chetause then.
 " They did not whistle or ring the bell after
 " they got past the post as I heard. I did
 " not hear the bell and think I should not have
 " heard it if they had rung as I was in a
 " buggy driving about six miles an hour
 " and it made considerable noise.

I should think they were going by the
 whistling post some thirty or forty miles
 an hour I drew up and hitched my horse
 and then went over to the depot. I found the
 Plaintiff there and persons were rubbing him
 The cars were then north of the depot. I was
 one of the Physicians that set his arm. I
 called it a compound fracture The right arm
 was broken twice. I have not examined him
 since. This was the latter part of August I
 think the 23d of August A D 1860 I am
 acquainted with the position of the road there
 Was there any Road South of the Illinois
 Central Rail Road Depot? Objected to
 Objection overruled and defendants excepted
 Ans. There is a crossing there 35 or 40 feet
 South of the Platform - Do you know who
 made the Road there? Question allowed
 and Defendants Excepted Ans. The People
 furnished the material and the Rail Road
 hands did the work. There were two or
 three empty cars standing on the side
 track on the west side and a building
 on the west side of the track A person
 standing 100 or 150 feet west of the track
 could have seen a car at the whistling
 post nearer than that I don't think they
 could see The ground was lower down at
 the post than at the crossing. I think at
 150 feet west from the track cars could
 be seen at the switch but within 100 feet

I think they could not, but I did not look to see particularly that day, I don't know whether Mr Buchner owned the horse and buggy. The horse was worth from Eighty to one hundred Dollars He looked like a colt Three or four years old. This was the 22nd or 23rd of August 1860.

"Crop-Ex

I think a person Two hundred feet from the crossing could have seen down the track. When I said a man could not see the track at a hundred feet because of the Warehouse and cars I meant the corn crib on the cut. This was about Twenty feet square and was South of the South End of the Switch and below the Two Tracks. When I first heard the cars I was perhaps half a mile from them. They were South of me I heard them distinct enough to know there was a train of cars. There were some men at work South of the whistling post. The deep cut in the Road is South of the Switch. I should think an individual could discover an engine when approaching sooner than an Engineer could discover a man. I did not time my horse when approaching town nor the Engine. If a man was away from the track the engine could not see him. I don't think I should have heard the bell if it had rung. The train passed up about four in the afternoon

There were two or three cars on the side track
 Should think the first car was not more
 than fifteen or twenty feet below the crossing
 The next fifteen or twenty feet below the first
 If a Man had been on the west side fifteen
 or twenty feet off the Engineer could hardly
 have seen him at the upper crossing there
 is a sign board up with the usual sign
 "Rail Road crossing Look out for the cars"
 but there is none on the South the lower crossing
 was put down in the Summer a year ago
 Mr Planijan used to come through and give
 the hands directions. he gave the orders to
 put down the plank at the lower crossing
 the approaches to it are level so that a
 man could drive quick across it. A man
 with his ordinary organs of hearing could
 have heard the train half a mile off and
 safely crossed the track without being hurt
 The Engineer could not have seen a man
 until he got almost on to the track even
 if he were looking out

Miss J. H. Warner Sworn.

I know the Plaintiff
 I never saw him to know him until he was
 injured I saw the Plaintiff drive on to the
 track at Chebouse and the train was
 there at Mr Leonard's Corn Crib He was
 coming from the west and going east. His
 horse became unmanageable as he got upon
 the track and ran north on the track

towards the Depot He was attempting
 to cross the Road on the crossing; I saw
 the cars strike one wheel of the Buggy
 The Plaintiff was behind the Platform
 and the cars were running faster than
 usual My husband came up to the Depot
 in about fifteen minutes after I got there
 I was attracted by the rumbling of the cars
 I looked at them because the evening train
 came at 5.45 PM and this was much earlier
 I first saw the cars after they had passed
 the whistling post I stood at the door of
 my house about one hundred and fifty feet
 off from the track and heard no bell or
 whistle after they passed the whistling post
 I think if they had blown the whistle or
 rung the bell I would have heard them
 The train was at ^{an} unusual time, It consisted
 of an engine and one car, The old gentleman
 was taken to the house of Mr Boardman
 after he was hurt Just as they were
 passing the Station House they rung the
 bell and blew the whistle, From the position
 I was in I could hear the whistle or bell just
 as easy before as after the accident but did
 not

Cross-Ex

The Plaintiff was in the wagon when
 the engine struck it I saw him on the back
 and his horse became unmanageable, he turned
 north when the cars were running and
 when the cars struck the wagon had got
 about half way from the crossing up to the

Platform Any body of ordinary hearing could have heard the Cars. I could have heard them if I had been where I saw Mr Buchner His head was turned to the North and so was his horse. The Engine made a great deal of noise It must have been some 300 feet over to My Residence from the Depot, when the Plaintiff was West from the track I saw him nearly opposite the crossing about fifty feet off, When the horse saw the engine he sheared off on to the track, There was some cars standing on the track just where I think they would obstruct his view I did not hear any bell ring and I was not frightened at the time it did not Ring —

Re-Ex — When the horse became unmanageable he sheared off and run down the tracks Joseph Gleason Sworn. Lived in Clifton a year ago last August. Know the Plaintiff. Was in Chebouse the day he was injured I did not see the Cars strike him. When the cars came through to the North End of the Depot they were running fast. I think faster than their usual speed. I saw the old man and helped get him up and move the horse off. I have a faint recollection of hearing ^{at all} but cant tell. I couldnt tell where they stopped.

" I did not hear any whistling or ringing
 " before they came to the crossing
 " Cross Ex.

" I was standing in the door of one of the stores
 " opposite I did not hear or see the train until
 " it came through.

" Isaac Smith Swoon " I Resided a year ago
 " last August four Miles East of Chebouse
 " I was at home when the accident occurred
 " and in Chebouse when the Doctor came from
 " Haut Baker on the Engine

" Henry Ostrander Swoon " I am acquainted with
 " the Plaintiff and was a year ago last August
 " what were the circumstances after Mr Buchner
 " at the time he got hurt? objected to Question
 " allowed to which the Defendants ^{then & there} excepted, Ans.
 " He depended wholly upon his own Labor for
 " a living. He had not much of any property,
 " he had a wife.

" Cross. Ex. He was a Smart Man for one of his age
 " before he got hurt. he is a man of about
 " seventy years of age. He is a little Deaf
 " and was a year ago last Summer his wife
 " is also an aged person

" Dr Hamer, Re-called

" I have examined the
 " Plaintiff's Wounds since I was before on the
 " Stand - his upper arm bone seems to
 " have lapped some. The radius and ulna
 " have united together and the muscles have

Shrunk so that he can use only his Thumb
and fore finger His leg had a strip cut
out of it and the flesh sloughed off and
Skin adheres to the Bone He has not a
good use of his leg and never will have I
think he is so old not of his arm.

D^r Buchner Sworn

" I lived in Hancock
County a year ago last August. Am a Son
of the Plaintiff. was a practicing Physician
at the time and was with him in two and
ahalf hours after he was hurt. his arm
was broken in four places his leg was
bruised very badly and he suffered very
much. It became inflamed and sloughed
off on the outside He was confined to his
bed between two and three months and
when he got out he was not sound his arm
is ~~not~~ so now that he has but little use
of it Before his injury he made a good
living at work. He was a wheelright
and worked about Machinery. He is not
able to work now. What are the Plaintiffs
Circumstances now? objected to, objection
overruled and Defendants excepted. Ans.
When he was hurt he had a home and
five acres of land. Since he got hurt
he has been obliged to depend upon the charity
of his friends

John Buckley Sworn

" I was at Chebanse

When the accident occurred. The Plaintiff
 was coming from the west to the East
 on the South Side of the Depot, I saw
 the Train Two hundred Yards below the
 Crossing they were neither ringing a
 bell or blowing a whistle and were coming
 rapidly. When the Train struck the Plaintiff
 he was about the middle of the Rail
 Road track with his horse turned north
 I saw Mr. Puchner when he came on to
 the track and the cars were then forty five
 or fifty yards off. I picked him up after
 he was hurt. When I caught sight of the
 old man he made a pause and turned
 to the left and attempted to get off the
 track. The horse staggered and the old
 man tried to get out of the way but was
 caught on the low catches.

“Cross Ex.”

I was standing in my door at this time
 about a hundred feet from the Depot in
 a straight line. I first discovered the
 cars about 250 yards from the Depot
 I saw Plaintiff coming from the west
 side a few feet from the Rail Road.
 He was driving at the rate of six or eight
 miles an hour he was then about fifteen
 feet from the track and the cars were
 south about 150 feet the horse then turned
 to the North and was caught in turning.
 The wagon was on the crossing when it
 was caught. didn't think he was as far

" North as the end of the Platform the wagon
 " and horse was in a circle nearly and
 " the train hit the wagon behind

" Evidence for the Defendants
 " Edward Vaughn Sworn.

" A year ago last August
 " I was running a Train on the Illinois
 " Central Rail Road, it was a wild train
 " from Gilman which had to be at Naukucku
 " at 4.45 P.M. I was an Engineer. It was
 " My business to look out for obstructions
 " as the train was a wild train. I saw the
 " Section Men about Eighty Rods South of
 " the Station and there we came nearly to a
 " dead stop. The fireman rang the Bell
 " all the way from these Men to the Station
 " I did not whistle at the Post. The first
 " I saw of the Wagon it was coming up by the Smoke
 " Stack. The crossing them South of the Depot is not
 " a public crossing. The Public crossing is north of
 " the Depot. The train was running from seven to
 " Eight Miles an hour when I struck the wagon
 " to the best of My recollection. I was ten yards
 " North of the Crossing when the collision occurred
 " What degree of caution were you using when
 " you ran into the wagon? Objected to by Plain-
 " tiff. Question allowed and Plaintiff Excepts
 " Ans. I was using the same caution that I
 " always do, I did not see any object, I was
 " looking out for Section Men, I was looking

" out on the right hand side There were cars above
 " the crossing and cars below the crossing. So
 " far as I know there were four or five below
 " the crossing and three or four above The first
 " below the crossing on the south side was as
 " near as three or four yards. The cars above
 " were probably a couple of car lengths from
 " the crossing. After the Train stopped when
 " I went back the Plaintiff had got up on his feet
 " and he said if he had had his hearing this
 " would not have happened The bell was
 " rung from the place where we nearly came to
 " a stop and from the whistling Post all the
 " way up to where the accident occurred,
 " The way this place came to be a crossing is it
 " is a level place there and the People would
 " cross and the Plank are put there to protect
 " the Rails It is not a regular crossing we
 " were north of the crossing when the wagon
 " came on to the Snake track

" Cross. Ex.

" I now live in Chicago I have been in the
 " Company's employ for five years as Engineer and
 " am now I was running the Cars as engineer and
 " agent of the Company at that time At this time
 " there was no train due at Chetance I got to
 " Chetance at 4.25 P.M. and then we were 80
 " Rods from the Depot right by the whistling
 " post and there I came almost to a stop,
 " I did not tell Mr Buckley and Mr Bigelow
 " that when I got to the whistling Post I looked
 " out and saw no one on the track and set down

and threw open the valves and let the Train
run I know Mr Buckley by sight, I did
not have any such conversation with any one.
I did not blow the whistle at the whistling
post and I did not go faster than Eight
Miles an hour, I run about a rod and a half
before I stopped the train I did not run down
to the Section House I know this as positive
as any thing I have sworn to, I know how
the track at the Cropping came to be laid
down I saw them laying it down, Deams do
crop there The planks are so fat long, Deams
will crop there any way, I dont know who
furnished the lumber If the public furnished
the lumber probably it was done for their
convenience, I was standing up as I usually
do, The valves were open and the cars were
running at the usual rate The brakes were
not put on I whistled on the brakes as soon
as I saw that I had struck a Wagon, I know
there were Cars standing South of the track
The Conductor was holding the Plaintiff up and
some others when he said if he was not deaf
it would not have happened I am as certain
of this as of any thing else, I have testified,
After he had been up five to ten minutes he
made this statement, The Train was stopped
right at the end of the Platform the end of the
Engine near the north cropping I am still
in the employ of the Rail Road and get good
wages If I should have to leave them I'd get
another job, I am not married to them,

" There is an up grade all the way from the whistling post. I could not see any thing near the road at the crossing. The Bell was rung all the way from the whistling post up. But I did not whistle at all. The cut was below the crossing. I believe I could have seen the cars if I had been on the Prairie.

" Re Examination, . . . At the whistling Post I would be some six feet lower than the crossing at the Depot. When we get up to the crossing we are at the height of the grade, we could not have seen any one situated as we were who might be coming from the west by the car below the track until he would get past the car.
John S. Cooper sworn.

" I was on the Train at the time this accident occurred. I was sitting in the way car on the west side looking out. I was a Breakman. It was about four o'clock P.M. I did not see the wagon when it was struck. I know where the whistling post is. After we came to the switch the Bell was rung from time to time till we got up to the crossing. As near as I can get at it we were running between seven and eight miles an hour and the car stopped at the end of the platform. When we stopped I got off the hind end of the car onto the platform at the north end of the Depot. I went back to where Plaintiff was, did not hear him make any remark. There were cars standing on the side track.

" There was a Car or so about the corn crib and
 " one about a car length South from the crossing
 " I dont know whether the Bell was very loud
 " enough for a person of ordinary hearing to
 " hear it at the crossing. I heard it in the car.
 " It was very as loud as usual I dont know
 " whether this was a regular Rail Road crossing.
 " At the Spud you were running and the manner
 " in which you were raising that bell and
 " the distance you were from that crossing
 " was it sufficient to warn off a person of
 " ordinary hearing and caution at the crossing?
 " Objected to by Plaintiff. Objection Sustained,
 " and Defendants excepted

" Cross Ex.

" I saw hands to work on the Road right at
 " the whistling Post. There was whistling at the
 " post. I think so because I went out and
 " put on the brakes and this was before we got
 " to the men then I took off the brakes again
 " and let the cars go. The end of the switch
 " is about two thirds down from the whistling
 " post I am certain the Bell was ringing
 " from the end of the switch up to the time it
 " struck. I saw a Man I called the Plaintiff
 " on the Prairie driving towards the track
 " when ^{we} were about half way between the
 " crossing and the switch but could not tell
 " as he was coming across the track. I dont
 " know certainly it was the Plaintiff. There
 " was no house between Me and him

He was coming from the South west there
 was no whistling done after the man was struck
 and I cant say whether there was any ringing
 The Wagon was taken off the Engine a little
 South of the North Crossing a part of the
 Wagon was thrown over I think the fire-
 man went out and took off two of the
 wheels ^{from} upon the Engine
Patrick M. Laughlin Swore

I was a Brake man

on the train in Question We were running
 North at a Speed of from Seven to Eight Miles
 an hour The Bell was ringing to the best
 of My opinion - We commenced ringing where
 the Section Men were about eighty Rods from
 the Station and running after we passed them
 to the Station. We had been to Silvan with
 Empty Cars and were returning. We came
 nearly to a stand where the Section Men
 were at work. I was getting sitting on the
 inner side of the Car and looking out I
 saw the Man coming on the Prairie with a
 horse and wagon and thought he would stop
 before crossing but he did not. If the horse
 had been stopped then there would have been
 no danger as he came upon the side tracks
 I sprang to the break when I first saw him
 we were ten or fifteen car lengths from him
 and he was coming about as fast as his
 horse could trot. We stopped at the North
 end of the Platform. I couldn't be certain
 which part of the Wagon was struck first.

" It was struck North of the Crossing. I didn't
 " put on the Brake till we struck. If the man
 " had had ordinary hearing he could have
 " heard the Cars. I could not say whether the
 " Whistle was blown or not after we struck the
 " team. I heard the Man say when he was
 " taken up that if he had had his hearing this
 " would not have happened. He was driving
 " in a lively trot, about as fast as the horse
 " could trot. The horse turned North and the
 " horse must have been struck first. I was
 " standing inside the Car and jumped out
 " and put the brake on just as the Engine struck
 " him.

" Cross Ex. I saw the Plaintiff coming towards the Road
 " I did not put on the brake until after the
 " Engine struck the horse. I did not put on
 " the brakes for I thought the man would not
 " be so foolish as to try to cross. John S. Cooper
 " and myself have ever since then been in the
 " employ of the Illinois Central Rail Road Company.
 " When I saw the Man coming towards the track
 " we were within ten or fifteen car lengths
 " of him.

" John Bulkley Recalled by Plaintiff

" I know Vaughn - Did you
 " have any conversation with Mr Vaughn and
 " Mr Bigelow at the time this injury occurred
 " objected to, objection overruled and Defendants
 " excepted Ans. When Vaughn came back
 " from Naukaku he said he flacked up a
 " little below the switch and after he passed

" 60 "

" then he opened the valves looked ahead
" and saw nothing then sat down, thought
" everything was safe and knew nothing of
" the accident until told by the Fireman,

" The above and foregoing was
" all the evidence given in the case whereupon
" both sides resting upon the Court proceeded
" to read to the jury the following instructions
" on the part of the Plaintiff to the giving of
" each which the Defendants by their counsel
" then and there excepted.

" 1st "

" Gentlemen you are instructed that you are the
" sole and exclusive judges of the weight of
" evidence and you are not bound to accept
" a statement as true even though it be un-
" contradicted for you may rightfully and
" properly consider the manner of the witness
" his readiness in volunteering statements for
" the party calling him, and the circumstances
" surrounding him calculated to mislead him
" or to induce him to swear falsely, and
" in this case if you believe the witnesses for
" the Defense Vaughn, Cooper and McLaughlin
" being at the time of the injury of the Plaintiff's
" employees upon the car and locomotive of the
" defendant which inflicted the injuries upon
" the Plaintiff, and being at the time of giving
" their testimony still in the employ of the
" Company you may with propriety consider
" whether the fear of a loss of a situation
" upon the road or employment by the Rail Road

Company has or has not influenced them to depart from the truth and if you believe that they were influenced to swear falsely thereby and if you further believe that their Statements were uncertain and ~~contradictory~~ And that their Manner upon the Stand was not of the Character of truthfulness frankness and Candor you are at perfect liberty to reject their Testimony altogether if from all these Circumstances or others from which you believe from the evidence to ^{They are in your opinion not to be believed} surround the witnesses,

2

You are further instructed that the Law requires the Illinois Central Rail Road Company to ring a bell of at least thirty pounds weight or blow a whistle at least 80 rods from every Road crossing and to continue the ringing of the Bell or blowing of the whistle at intervals until after passing the crossing And in this case if you believe from the evidence that at the time of injuries upon Plaintiff that the Bell was not rung or Whistle blown as required by the Law And if you further believe that Plaintiff has produced evidence tending to show that the injuries to Plaintiff were in consequence of such Neglect then it devolves upon the Rail Road Company to prove clearly and satisfactorily that the injuries to Plaintiff were not the result of such neglect

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If you believe from the evidence that the crossing of the Rail Road of the Defendant where the Plaintiff was attempting to cross was built by the Defendant or by their assistance and consent for the Mutual convenience and advantage of the Defendant and the public, and that the crossing had been adopted by the public in going to and from the freight and Passenger Depots of the Defendant and about other business of the Public, then under the issues in this case the Plaintiff is not bound to prove that there was a legally laid out road at such crossing and that the Defendant is bound at that point to use the same diligence and carefulness as if the said Road crossing was a legally laid out Road

4

If the Jury believe from the evidence that both Plaintiff and Defendants were approaching said crossing with equal rights to cross the same, and the servants of the Defendants saw the said Plaintiff approaching said crossing at the distance of ten or fifteen cars from said crossing and at a sufficient distance to check up said engine and neglected to check up said engine the law is for the Plaintiff, unless they further believe that said Plaintiff had lawful warning of the approach of said engine and cars and neglected to avoid the injury

5

That the more gross the Negligence
 Manifested by the said Defendants the less
 degree of care will be required of the
 Plaintiff to enable him to recover in this
 case And if the jury believe that there
 were faults on both sides the plaintiff may
 recover in this case If the jury believe from
 the evidence that said Defendants were
 guilty of the greater degree of Negligence,

The above and foregoing were
 all the instructions given on the part of the
 Plaintiff Whereupon the Court gave the
 following on the part of the Defendants.

1st

That a Party seeking to recover damages
 for an injury which he alleges has been
 caused by the Negligence or misconduct of
 others must show to the jury that he has
 not been wanting in reasonable care to
 avoid the injury for if he has been so
 wanting (to which the Court added "and thus
 contributed to produce the injury") he cannot
 recover

As to the giving of which said instruction
 as modified the Defendants then and there
 excepted.

2

The Plaintiff is bound to prove
 the Crossing where this accident occurred
 to be a public highway and the jury
 are instructed that a public highway

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" can be only created in three ways, first -
" by Prescription that is twenty years or more
" use - Second by dedication by the proprietors
" of the Land And third by laying out and
" having the Road Recorded under the Statute
" And if the Jury believe that the Plaintiff has
" not proved a public highway to exist in
" one of these ways then the law is for the
" defendants and the Plaintiff cannot recover

" 3

" If the Jury shall believe from the evidence
" that the injury happened North of the Crossing
" and on the Land and tracks of the defendants
" and was in the use of the defendants the
" Plaintiff was a Trespasser thereon and if he
" was on said grounds without permission of
" the Defendants and not for any necessary purpose
" he was there in his own wrong and at his own
" risk and the law is for the Defendants and
" the Plaintiff cannot recover unless the Jury
" believe from the evidence that the defendants
" willfully injured the Plaintiff.

" To which the Court of its own
" Motion added " This would not apply if the
" jury should believe from the evidence that
" the horse rushed on to the tracks North of
" the Crossing to avoid the engine, or Plaintiff
" turned him that way for that purpose "

" To the giving of which instruction
" as modified the Defendants then and there
" accepted

" The following instruction was offered
" by the Defendants

If the Jury believe from the evidence that the
 Plaintiff failed to use that amount of caution
 which a prudent Man would have used in
 crossing the Rail Road tracks at the time he
 attempted to cross the same and thereby
 became injured without gross carelessness
 on the part of the Servants of the Rail Road
 Company it is immaterial whether the Bell
 rang or alarm was given by the whistle at
 the Whistling post the law in such case
 is for the defendants

Which instructions the Court
 wholly refused to give and thereupon the
 Defendants excepted

Whereupon the Jury retired
 and afterwards returned a Verdict into court
 of \$2500. for the Plaintiff - And thereupon
 the defendants made their Motion for a New
 trial herein which coming on to be heard
 afterwards the Court overruled said Motion
 and rendered final judgment for the Plaintiff
 upon the Verdict so the overruling of which
 said Motion and rendering Judgment for
 the Plaintiff the defendants by their Counsel
 then and there excepted and in as much
 as the matters aforesaid do not appear
 by the Record of said Cause it is prayed
 that the Judge of said Court will Sign
 and seal this Bill of Exception.

66 " It is hereby Stipulated and agreed by and between
" the Counsel of the respective parties that the fore-
" going is a true copy of the original Bill of
" Exceptions heretofore approved by the Judge
" of the Shoguenis County Circuit Court and which
" was destroyed by fire in the Burning of the
" Court House and it is further Stipulated that the
" original Bill of Exceptions and bond was filed
" within the time fixed by the Court and that this
" Bill of Exceptions may be taken by the Supreme
" Court and treated the same as the original And
" it is further Stipulated that there was a summons
" duly issued and served in this cause and that
" the copies of the Pleadings in the Record of this cause
" are correctly made In Witness Whereof we have
" hereunto set our hands this tenth day of April
" A D 1872

" Oliver & Rhodes &
" Fletcher & Kay
" Atty's for Plaintiff
" Douglas Wood & King
" Atty's for Def't

And afterwards &c there was a
certain "appeal Bond" with filed with the clerk
of said Court which reads in the words and
figures following to-wit

Know all Men by these Presents That me
 The Illinois Central Rail Road Company
 and W. C. Osborn and John M. Douglas are held
 and firmly bound unto Charles Buchner in the
 full sum of Five Thousand Dollars lawful
 Money of the United States for the payment
 of which well and truly to be made we bind
 ourselves our heirs and administrators and
 assigns jointly severally and firmly by these
 presents Witness our hands and Seals
 this 25th day of December A. D. 1861

The condition of the above
 obligation is such that whereas the said
 Charles Buchner did on the 19th day of
 December A. D. 1861 at the November Term
 of the Circuit Court of said Choquois County
 A. D. 1861 before Charles R. Starr Judge of
 said Circuit Court in said County recover a
 judgment against the above bounden Illinois
 Central Rail Road Company for the sum of
 Twenty five hundred Dollars and costs of Suit
 from which judgment the said Illinois Central
 Rail Road Company has taken an appeal
 to the Supreme Court of the State of Illinois

Now if the said Illinois Central Rail
 Road Company shall duly prosecute its said
 appeal and shall pay all judgments costs
 interest and damages in case the said judg-
 ment of said Circuit Court of Choquois County
 be affirmed then the above obligation
 is to be void otherwise it is to remain

68 " in full force and Effect.

" The Illinois Central

" Rail Road Company

" Per John M. Douglass attorney in fact.

" W. H. Osborn (Seal)

" John M. Douglass (Seal)

State of Illinois
Stogewie County, Ill. I Thomas Vannum clerk
of the Circuit Court in and
for said County in the State aforesaid do hereby
certify that the above and foregoing is a true
complete and perfect transcript of the Record
of the proceedings of the Stogewie County Circuit
Court in the cause therein entitled wherein
Charles Buchner is Plaintiff and the Illinois
Central Rail Road Company is Defendant
and further that the same contains a true and
literal transcript of sworn and admitted
copies of all the original papers filed in
said cause pertaining to or forming any
part of the Record of said Court in said cause
The Original Declaration and Bill of Exceptions
and appeal Bond filed in said cause having
been destroyed by fire on the 25th day of
February A.D. 1862

In attestation of which I have hereunto
set my hand and affixed the Seal of said
Court at office in Millington in said
County this 19th day of April A.D. 1862

Thomas Vannum clerk

By W. H. Taylor deputy



The Illinois Central
Rail Road Company

Appellant

vs

Charles Buckner

Appellee

Assignments of error

And now comes the
said appellant by Douglas, Wood &
Long, its attorneys and says the fol-
lowing errors are manifest in the
proceedings of this cause, upon
the face of this record -

- I The finding ^{of the jury} is not supported by the evidence.
- II The court below gave improper instructions to
the jury, on the part of the plaintiff
- III The court below refused to give proper instructions
as asked on the part of the defendants in that court
- IV The court below improperly altered the instructions
asked for on the part of the defendants below
- V The court below admitted improper evidence
on the part of the plaintiff -
- VI The court below erred in overruling
the motion for a new trial and in
giving judgment.

Douglas, Wood & Long

Attorneys for appellant

Pricker in error

Franklin Wade

Atty for Appellee

Apr. 23. 1867

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Charles Buchner

The Illinois Central
Rail Road Company

Record

Filed Apr. 23, 1862
L. Ireland
Clerk

Douglas, Wood & Co
Depts. attys